

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON RULES**

**Call to Order:** By **CHAIRMAN FRED THOMAS**, on December 20, 2002 at 1:30 P.M., in Room 317 C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Fred Thomas, Chairman (R)  
Sen. Bob Keenan, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Jon Ellingson (D)  
Sen. Jim Elliott (D)  
Sen. Duane Grimes (R)  
Sen. Walter McNutt (R)  
Sen. Corey Stapleton (R)  
Sen. Emily Stonington (D)  
Sen. Jon Tester (D)

**Members Excused:** Sen. Dan McGee (R) (proxy)  
Sen. Bob Story Jr. (R) (proxy)

**Members Absent:** None.

**Staff Present:** Greg Petesch, Legislative Branch  
Fredella D. Haab, Secretary

**Please Note:**

**Committee Business Summary:**

Hearing & Date Posted: SR1, 12/13/2002

**CHAIRMAN FRED THOMAS, SD 31, STEVENSVILLE**, said they would go through this page by page. **Mr. Greg Petesch, Legislative Services, Helena, SEN. MIKE HALLIGAN, MISSOULA**, and he met in Missoula and went through and did some adjustments. **Mr. Petesch** then pulled several House oriented-rules over to make the Senate rules more conducive and flow like the House Rules. A lot of changes were in the committee structure in Chapter 3.

**SEN. JIM ELLIOTT, SD 26, TROUT CREEK** asked the difference between the underlined language and the italicized language.

**Mr. Petesch** said the italicized changes were made after the meeting in Missoula with **SEN. THOMAS** and **SEN. HALLIGAN**. He didn't think there was anything of substance in Chapter 1.

**CHAIRMAN THOMAS** asked if there was anything anyone had to say in Chapter 1? In Chapter 2 they had changes in 20-20.

**Mr. Petesch** said it was based on current House Rules and what it restricted was the time when a "question of privilege" was properly addressed to the Senate.

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, asked what was considered a "question of privilege?"

**Mr. Petesch** said they were outlined in one and two. They are now a, and b, "things affecting the collective rights, safety, dignity, and integrity of the proceedings of the Senate or the rights, reputation, or conduct of individual senators in their capacity as senators."

**SEN. DUANE GRIMES, SD 20, CLANCY**, asked if somebody demeans you, and right after that somebody makes a motion, a table motion or something in a committee, then you can't rise on "point of personal privilege" until after the motion was disposed of?

**Mr. Petesch** said the motion had to be disposed of before you can make a reply.

**SEN. COREY STAPLETON, SD 10, BILLINGS**, asked if it applied to floor proceedings. Why would we use language like "table?" We never say that on the floor. He noted that they say "indefinitely postponed."

**Mr. Petesch** said it was a motion that was appropriately made in the Committee of the Whole and was proper.

**SEN. VICKI COCCHIARELLA, SD 32, MISSOULA**, asked about the motion?

**Mr. Petesch** said it just kept you from interrupting what was under consideration when you were offended.

**SEN. VICKI COCCHIARELLA**, was thinking maybe it wasn't a "question of privilege" but a conflict of interest?

**Mr. Petesch** said that was not a question that's privileged. If it showed you had conflict of interest, it was not a question of privilege.

**CHAIRMAN THOMAS** went on to 20-70 which was obvious. 20-80 was on lobbying by employees.

**Mr. Petesch** said this was another rule copied over from the House. The Senate had no rule on lobbying by Senate employees.

**SEN. JOHN TESTER, SD 45, BIG SANDY**, asked what it prevented?

**Mr. Petesch** said one can testify in a committee as an employee of the Senate if you are requested to testify.

**Secretary Skelton**, said the directive they give all the employees was they were absolutely not allowed to lobby in any way.

**SEN. TESTER** asked if it was she that gave permission to the senate aides that they had working for the minority? Do you give permission or do we?

**Secretary Skelton** stated that if it were really mundane she might give permission. If it were controversial, she would go either to **SEN. TESTER** or to **PRES. BOB KEENAN, SD 38, BIGFORK**.

**Mr. Petesch** said that it was in your rules, S10.100, specifically under the duties of the Secretary to the Senate, was to supervise staff subject to the direction of the president.

**SEN. COCCHIARELLA** thought this went too far because she knew of situations in the past where interns for senators testified on a bill, who had done work on a bill, and were paid by the senator.

**Secretary Skelton** said an intern is not an employee of the Senate.

**SEN. COCCHIARELLA** asked about the pages. She knew that there were a couple of pages who testified on the minor in possession legislation.

**Secretary Skelton** wondered if they were asked to testify?

**SEN. COCCHIARELLA** said they weren't.

**CHAIRMAN THOMAS** thought that pages would be employees. Concerning interns, he thought this applied to them also.

**SEN. COCCHIARELLA** was also concerned that our employees were also citizens of this state and if they were to choose to call it their lunch time and wanted to testify on legislation, they should be allowed to do so. She thought they needed to protect their rights as citizens.

**Secretary Skelton** said there was a public perception that an employee probably had an inside track when sitting next to this senator everyday, and lobbying in his ear would somehow give them more entre than the average citizen.

**SEN. COCCHIARELLA** agreed with that. She didn't have a problem with what they were trying to do but she thought this language was a little too stringent and needed to be clarified.

**SEN. STONINGTON** stated that each party hire aides that are political aides, and certainly she thought each party's aides go out and talk to senators about key bills and say the leadership wanted you to support this bill or whatever.

**CHAIRMAN THOMAS** said he saw it differently. If he had an aide that went and talked to Sen. Smith saying here was what **SEN. THOMAS** was thinking or whatever, reporting back to that Senator, he didn't see that as lobbying.

**SEN. STONINGTON** said that was a fine line.

**CHAIRMAN THOMAS** said he didn't think it was lobbying in that aspect. He wasn't going to send an aide to the senator saying **SEN. THOMAS** wants your vote. He didn't think they had a severe problem at all but one could occur. They could have a single person who was a Republican employee who was causing all kinds of pain and this gave us a tool to work with.

**Mr. Petesch** recited the Code of Ethics. "A public employee, and public employee includes temporary employees, may not use public time, facilities, equipment, supplies, personnel or funds to elicit support for or opposition to any political committee, the nomination or election of any person to public office, or passage of a ballot issue." They don't address legislation in the ethics law.

**SEN. COCCHIARELLA** said there was a reason for that. The press could use this and say, "Hey, so and so was talking to so and so. Did you know that? It was about your bill." She could say here was the rule, you broke the rule, get rid of that person. She just thought, and she didn't see there was a problem, unless we can narrow this down to make it clear because several years ago

she was carrying around presidential qualifying petitions, and she had them with her at lunch and she got turned in over those.

**SEN. GRIMES** said under paragraph two it read, "the president or the administrator may discipline or discharge. He thought an alternative language saying correct or discipline up to and including discharging. The president or the Legislative Administration may correct or discipline up to and including discharge of a Senate employee in violation of this rule.

**PRES. KEENAN, SD 38, BIGFORK,** thought a lot of this can be handled if somebody was over the line. It just kind of goes through the chain of command; have discussions and solve it.

**SEN. ELLIOTT'S** asked what the job description would entail if there was something in the job description, which might be regarded as "advising?"

**SEN. KEENAN** said he thought it was more research and all that but it could be easily interpreted as lobbying. He asked if they had job descriptions for everyone?

**Secretary Skelton** said yes, but they were very general.

**SEN. STAPLETON** thought they could leave out 20-80 and segregate.

**CHAIRMAN THOMAS** said they could work on language in this paragraph. We can do that in the final hearing on this. He suggested they set it aside and probably not adopt it.

**Mr. Petesch** stated the next section provided the requirement that the leadership had when someone knowingly violated the rules. You called the person to order, in which case they were supposed to sit down. You don't get to debate it. If the Senate upheld the appeal, you proceeded. If not, you sit down and be quiet. They can also refer the matter to the Rules Committee for a decision by the majority or minority leader.

**SEN. STAPLETON** asked if this included the Chairman of the Day?

**Mr. Petesch** said it included the President and the Majority or Minority Leader. Also, it allowed them to police their own violations of rules but allowed a procedure for someone who disagreed with the call.

**Mr. Petesch** explained the Bills & Journal Committee was eliminated at the request of that committee.

**SEN. STAPLETON** asked about how would you enforce the dress code if one senator said, "I don't want to wear a tie and coat?"

**CHAIRMAN THOMAS** replied they don't have any written rule. It was kind of traditional and you had heard me argue, the Senate was a good place to be and it had a lot more taste and civility etc. than the House did. A coat and tie was the unwritten rule. He would love to see another unwritten rule which said no Levis on Saturday. The more we do of that and the more we allow it, the less decorum we have.

**SEN. STAPLETON** appreciated the input but if you don't have any rules, it is very hard to enforce it.

**CHAIRMAN THOMAS** said the decorum of the Senate was under the control of the President.

**SENATOR STAPLETON** stated that he loved tradition and he thought, since it was eroding in the House, eventually it will affect the Senate.

**SEN. STONINGTON** thought basically this issue was handled at our caucus meeting. If it was not appropriate for people in the Senate to wear Levis on Saturday, you just need to tell them.

**CHAIRMAN THOMAS** felt it wasn't his decision to make. He knew he had Levis that are more expensive than khaki pants but that doesn't matter. They are still Levis.

**SEN. GRIMES** encouraged us to consider it a fact.

**SEN. KEENAN** said they made dress synonymous with decorum and he didn't see the connection. He said **SEN. NELSON, SD 49**, passed out an information sheet that she shared with him and he thought it could be handled in the caucuses.

**SEN. COCCHIARELLA** thought it was mutual respect and if somebody wanted to wear Levis maybe they'll get looked at but she didn't think leadership had the right to do anything to them.

**CHAIRMAN THOMAS** said he wasn't suggesting a rule but he just was discussing it.

**SEN. ELLIOTT** said his limited knowledge of Senate dress code went back to 1989-91 when the Senate Rules said women Senators had to wear dresses and **SENATOR REAGAN** took great offense over the issue.

**SEN. TESTER** agreed with **SEN. THOMAS** about the decorum and dress was part of who they were.

**CHAIRMAN THOMAS** thanked everyone for indulging in the discussion. In chapter 3, we took out Bills & Journal and last session they changed "Finance & Claims" to "Finance" and now they were changing it back to "Finance & Claims." The law said "Finance and Claims," and the rules were reflecting that.

**Mr. Petesch** said in a committee the floor leader could be a member for purpose of establishing a quorum. The change in sub section 2 was a new proposal.

**CHAIRMAN THOMAS** said the big change was to have a quorum. He was not too sure it was something everyone wanted.

**CHAIRMAN TESTER** would prefer not to have it in there. He didn't think it was fair for anyone to come in that had limited knowledge about the debate and discussion to vote on a bill. It just wasn't a fair process.

**SENATOR GRIMES** said the only question he had was if it took the floor leader to make a quorum, maybe that floor leader could vote until such time as a quorum was reached. There could be times when delays go on and on and everybody was gone and the floor leader had to come in to make a quorum and get it started.

**Mr. Petesch** said how that traditionally had worked was once you have a quorum present, the meeting was convened and you could proceed to hear legislation. But, you can't vote on it, because you need a quorum to vote. You can continue to hear it once it was established but to actually vote you needed to reestablish the quorum. That was how that was traditionally applied. He believed that was the legitimate sense. The quorum may transact business and the majority of the quorum can vote on something even though the vote would be a minority of the committee.

**SENATOR COCCHIARELLA** asked who were the floor leaders?

**Mr. Petesch** said the minority and majority leaders.

**SEN. GRIMES** said his question was without this language can the floor leader take a part in transaction of business like voting?

**Mr. Petesch** said they could not. The rule as currently stated said you are a member for purposes of establishing a quorum. That would allow the committee to begin that hearing.

**CHAIRMAN THOMAS** said let's agree to take section 2 out.

**SEN. ELLIOTT** questioned "A Quorum of a committee must be present at a meeting to act officially," did the quorum act officially or did the committee act officially?

**Mr. Petesch** said it would be for the committee to act officially.

**SEN. KENNAN** wanted clarification. He asked if they were not talking about the Committee of the Whole in this chapter? **Mr. Petesch** said that was correct. He then asked when a floor leader was a member of the Business and Labor Committee and then showed up as the floor leader, was he counted twice toward the quorum?

**CHAIRMAN THOMAS** said "no."

**Secretary Skelton** said a member of the committee was the published list, and that did not include a floor leader.

**Mr. Petesch** said those appointed by the Committee on Committees are the members.

**SEN. COCCHIARELLA** asked if the minority leader came in and sat in the Business Committee can he sit in?

**CHAIRMAN THOMAS** said yes, the minority leader can come to a committee to help establish a quorum.

**SEN. COCCHIARELLA** stated that both the minority leader and the majority leader are on the Business Committee, you don't have the opportunity to make a quorum in that committee.

**CHAIRMAN THOMAS** asked **Sen. Elliott** if he were okay with that language in 30-40?

**SEN. ELLIOTT** said he was.

**SEN. STAPLETON** asked if he could use 30-40 in a conference committee?

**Mr. Petesch** said, no, a conference committee was just three people.

**SEN. STAPLETON** answered that was what he was saying. Wouldn't it be best to make sure that in that situation they actually had to be a committee member.

**Mr. Petesch** said they had to sign the report. He could only remember Rule 30-40 (2) being used in the second half of the session when people were presenting bills in the other House and everybody had a bill up at the same time, and so you got the



majority or minority leader to come in so you can begin a hearing because you had the public waiting for the meeting to start.

**SEN. KEENAN** asked if they were going to segregate in #2 the last sentence?

**CHAIRMAN THOMAS** thought they had just agreed to take it out. Was there anything else on 30-40? We will go to 30-50, Chair's duties.

**Mr. Petesch** explained that 30-50 clarified what had always been the case and that the chair of a committee can appoint a sub committee to act either formally or informally and then required when the minutes were authenticated that they be submitted promptly to the Secretary of the Senate. We had people asking for committee minutes fairly soon after meetings were over. So this just pointed out to the presiding officer the need to get those to **Secretary of the Senate, Rosana Skelton**, as soon as they were done. It also replaced the old microfilming about using electronic formats. There were going to be some committees that were recorded this time in the Senate digitally. Those will be put on cd ROMS and will be the electronic format. We removed the requirements that the fiscal analyst received a microfilm copy of the minutes of the finance committee.

**SEN. ELLIOTT** went to 30-60 and was presuming the sub committee was a sub committee of appropriations, it was not a subcommittee of a subcommittee.

**Mr. Petesch** said that was the intent here. The Appropriations Committee was a specific joint committee. If **SEN. GRIMES** had twenty DUI bills, and he needed to make sure they all worked together, he would appoint a sub committee to work on those 20 bills and maybe come up with a recommendation to the full Judiciary Committee on which bills to use and how to use them?

**SEN. ELLIOTT** wanted to understand if a sub committee can take official action on a bill in S30-60 (2)(b). He understood that the sub committee can recommend action.

**Mr. Petesch** informed **SEN. ELLIOTT** they were still in 30-40.

**CHAIRMAN THOMAS** said **Mr. Petesch** was talking about microfilming. In 30-50 there were three committees that were going to be video taped in room 405, the tax committee and two other committees.

**SEN. TESTER** asked if that was the only room they were going to be video recording people there?

**Secretary Skelton** stated there was one room in the House on the first floor and one in the Senate. We just decided to do it by room because 4-5 was the best room acoustically.

**Mr. Petesch** addressed 30-60 which clarified all meetings have to be open to the public and being open to the public doesn't mean you can be disruptive or disrespectful. The chair had the authority to maintain order, safety and decorum. Date, time and place of committee meetings must be announced. A committee or sub committee may be assembled for a public hearing to take testimony or official action. A formal meeting at which the committee may discuss or take action on bills, resolutions or other matters without testimony, was executive action. That was different than work sessions to just discuss bills or resolutions, where you don't do anything formally. He believed you had scheduled some of those organizational type meetings at the beginning of the session. Now with regard to taking action on a bill, a subcommittee can only make a recommendation to the whole committee. The bill was in the possession of the committee. The subcommittee can vote, for example, to recommend that this committee table these three bills, keep these two alive and amend this." That was what it was intended to reflect in there. The subcommittee meetings had to be open. They can either be work sessions or be in an executive session where they voted or took testimony.

**SEN. KEENAN** said that an appropriation subcommittee's actions are binding, however, it was not a recommendation.

**Mr. Petesch** said an appropriation subcommittee was in the Joint Rules. These were the Senate Rules.

**SEN. ELLIOTT** believed that a committee had possession of a bill and by extension it meant the subcommittee didn't.

**Mr. Petesch** stated bills are referred to committees and if you want to move a bill from your possession that had to be done as a motion on the floor.

**SEN GRIMES** asked if it all conforms with the House.

**Mr. Petesch** said that this was largely derived from the House procedures. The reason the House put this level of detail in their rules initially, was because they were hit with the consequences of term limits before the Senate was. Knowing that they were going to have so much turn over in new members, this level was detailed and spelled out in the rules so they could point to specific things for people.

There was the encouragement of a three-day notice for a committee hearing. It noted, subject to 30-120, which they would hit later but that was not always possible, but you tried to give the appropriate notice under the circumstances. That was not feasible at the end of the session or when you are up against a deadline. This provided that you cannot meet when the Senate was in session unless the president authorizes it. For example, if you are on the floor, you can't have a committee meeting unless the president specifically allows it. If you attended a committee meeting when that occurred, you are specifically excused by a rule subject to the call of the Senate being there. It clarified you had to keep appropriate minutes. This laid out what was required for legal minutes and he read that statute this morning. **SEN. STONINGTON**, in response to your question about what constitutes legal minutes for a meeting, it was required to be open and so were all committee meetings. We added testimony and exhibits had to be included in the minutes. We talked about, for example, in a joint select committee, the bill can't be reported directly from that joint select committee even if it was a senate bill. You don't have to hold a hearing but you had to have that committee act on that bill.

**Mr. Petesch** thought the last one they had was the Joint Select Committee on implementation of CI 75. They had massive amounts of legislation coming from that committee. That was because of the requirements that citizens had to vote to pass everything. For example, in that code section, 30-60 (7), the agency may set fees that had to be commensurate with the cost of the service they were performing. Those were all invalid under that constitutional amendment. They had to go in and say it must be submitted to the electorate for a vote and we had to go in and say the fees are those in place on the date that was approved and then anything had to be submitted to a vote. So what that required was that joint committees they couldn't act on that bill even though it was chaired by a senator. It couldn't report directly to the floor of the Senate. It had to go to the State Administration for them to bring it to the floor.

**SEN. GRIMES** had always thought a select committee was on a particular topic, and he thought maybe this time we would need one on drugs and alcohol. Once they had a body that heard all those bills and you take it back to the standing committee for what amounts to executive action, those people were not privy to all the discussions that went on in deciding what approach the whole legislature would take on this issue. Would that open the door to more partisan bickering and an opportunity for people to vote against something?

**Mr. Petesch** thought the concern was just that. Former **SEN. HALLIGAN** was the person who suggested this and his experience was with the joint select committee implementing CI 75. You had authority in your rules for reports of select committees but those were always considered Senate select committees and because the House had to vote also on Joint committee actions, it needed to come from a Senate Committee so it had an appropriate report. That was the thought there.

**SEN. GRIMES** had a question for **Mr. Petesch**. On 30-60, paragraph one, given everything that had happened with our open caucuses can we said that would it be a violation or a conflict with the district court decision? We said that with regard to caucuses, the press may be excluded if final decisions were not being made on a certain piece of legislation. Or word it to that if there was a public policy meeting developed in that caucus, we would have to open the meeting and, if not, there was some trigger mechanism that we could actually have a closed caucus. Was there any way of putting that in that would force them back to another legal action because we would be in violation of that decision that we didn't appeal? He was just wondering if they could put that in there. We could close our caucus for certain things that wouldn't need a threshold or a trigger that would become the domain of the public. Was there anything they can do?

**Mr. Petesch** said first of all, none of the rules address caucuses, even though they had a district court decision saying that they had to be open. We have a Supreme Court decision saying a caucus was an entity subject to suit. You could sue a caucus and because you can sue a caucus, and because it was made up of legislators, it was a public body now within the meaning of the open meeting law. Therefore, the only way you may close a caucus was if the demands of individual privacy clearly exceeded the merits of public's right to know.

**SEN ELLIOTT** asked who made that determination for the right to privacy assuming that there was some private matter to be discussed.

**Mr. Petesch** said it was always the obligation of the presiding officer and he didn't know you had a presiding officer in a caucus. That was difficult and he believed that the district court opinion was erroneous. The transcripts of the Con-Con clearly said they didn't consider the caucus a public meeting. The district court judge rejected that evidence. The decision to appeal was on whether an entity was subject to sue. That appeal was made and the Supreme Court decided, yes it was. It was decided at that point to let the decision stand. They have the right to request that the meeting be closed. But, also a

committee was meeting and he guessed a caucus falls within that. The Attorney General had clearly articulated that the entity had the duty to protect the privacy of others. The caucus may have the responsibility to close the meeting if privacy was going to be discussed.

**{Tape: 1; Side: B; Approx. Time Counter: 1 - 1.2}**

**Secretary Skelton** asked if you have an issue of sexual harassment, would that be a private matter in the caucus?

**Mr. Petesch** stated you have a specific rule that governed how harassment, including sexual harassment, was to be dealt with. He thought a caucus meeting would be an inappropriate place to discuss sexual harassment. That would be a matter of privacy.

**SEN. ELLIOTT** asked if the Senate could close the caucus and not tell why?

**Mr. Petesch** said that would not be acceptable. You would not want to try to defend that.

**CHAIRMAN THOMAS** asked if they were done with meetings.

**SEN. KENNAN** spoke about the bottom of page 15. He knew of an effort by committee chairs to get this information from people that wanted to testify. Now it was in the rules. Sometimes it can be a difficult task to accomplish and he didn't have any problem with 6, c, in that regard other than the fact that there was any connection back to Chapter 2 in decorum and maintaining the rules, violation of the rule 20-90. Was there any connection between this and that? Can a chair or was that just floor action in 20-90?

**Mr. Petesch** said 20-90 was just floor action.

**SEN. KEENAN** said now they had a rule that the chairs were going to have to get this accomplished. The address was new. It used to be a name, who they represent, proponent, opponent or other witness.

**CHAIRMAN THOMAS** said unless you wanted to do otherwise.

**Secretary Skelton** said anybody who was going to testify had to sign up with the political practices, so if you get their name that should be enough.

**CHAIRMAN THOMAS** said that was for lobbyists only.

**SEN. KENNAN** said this included members of the public that came and testified and the address was the new part.

**SEN. GRIMES** stated that he recalled that at least two, three, or four times since he had been in the legislature there have been people who had to testify anonymously because of incrimination issues and in fear for their lives. As a matter of fact there was one person who might not have survived if the name was out. He wondered if this took away our discretion?

**CHAIRMAN THOMAS** said in 30-60 the chair was in control of safety order and decorum. If there was an issue that **SEN. GRIMES** had brought up, would that allow the chair the discretion?

**Mr. Petesch** thought it might be a possibility but you had to remember that this was an open public meeting that they were talking about and the person who was testifying unless they have been subpoenaed had volunteered to come to an open public meeting and talk about something, because at that point that person had waived their privacy by voluntarily coming.

**SEN. GRIMES** said they have incidences in Judiciary where all the cameras, and everything was shut off and they did not use their names.

**Mr. Petesch** said he thought they should have closed the meeting at that time for privacy interest. Shutting off the cameras doesn't prevent me from seeing who the person was and doing whatever he chose to do to them because of that. Close the meeting for the privacy interest of that individual.

**SEN. GRIMES** said the alternative was that they could have closed the meeting for persons. The girls were coming and fearing for their lives and we could have closed the meeting for the privacy interest of those individuals. We needed their information.

**CHAIRMAN THOMAS** asked **Mr. Petesch** if that was addressed in here?

**Mr. Petesch** said it was a constitutional provision.

**SEN. KENNAN** questioned **SEN. GRIMES** about this situation in Judiciary where you had accepted anonymous written testimony. Does that rub up against this at all?

**SEN. GRIMES** agreed.

**Mr. Petesch** said that didn't apply specifically here because people were appearing before the committees. So it would allow you in your discretion to accept anonymous written testimony as

part of the record. He thought the example you gave, if you told the cameras they had to be off, you had an obligation to close the meeting for the privacy and safety of those individuals.

**SEN. GRIMES** said it would have been a good idea.

**CHAIRMAN THOMAS** asked if they were okay in 30-60? We will now go to 30-70.

**Mr. Petesch** stated that this was just the procedure he thought had always been done. You notified the sponsor of a bill before the committee and when it will be heard. You can't take up legislation unless the sponsor or co-sponsor are present or if the sponsor had consented to let someone else carry the bill for them in front of the committee. Subject to 3 b, you had to act on each bill in your possession by reporting it out with the recommendation: (1) refer another committee: (2) pass, (3) do not pass, (4) tabled or (5) indefinitely postponing. Here was the new part; "At the request of the sponsor, a committee may finally dispose of a bill without a hearing." The rules currently said that, "every bill referred to the committee had to be heard." If the sponsor wanted it to go away, why take up the committee's time and the public's time in a hearing for something the sponsor wanted to drop. So if at the sponsor's request, and only then, you could table or indefinitely postpone a bill without a hearing. That was what this allowed.

**CHAIRMAN THOMAS** said it allowed it but it didn't require it.

**Mr. Petesch** said it didn't require it, it allowed it. It said you may because the bill was in the possession of the committee. The committee had the authority to act on it over the sponsor's objection but this allowed you not to do it.

**CHAIRMAN THOMAS** said once you introduced a bill, you lose control of it.

**Secretary Skelton** said there had been cases where they just never were scheduled and that would no longer be allowed?

**Mr. Petesch** said that this specifically allowed it. When that was done before, it was a violation of the rules.

**Secretary Skelton** said her example was different because the sponsor may or may not want this to be kept in the bottom drawer. This never got out of the bottom drawer at the chairman's discretion and that no longer happens.

**Mr. Petesch** said that had never been proper. All bills referred to a committee must be scheduled for a hearing and something done with them and that was the current rule. It had never been proper for a committee chairman not to schedule a hearing on a bill that had been referred to his committee.

**SEN. KEENAN** asked if it would be worthwhile inserting "at the request of the sponsor in writing" so there weren't any misunderstandings between the chairman and sponsor. They might says he told me to bury the bill and there was no proof.

**SEN. ELLIOT** thought that was a very good idea.

**Mr. Petesch** said it would be at the "written request."

**SEN. KEENAN** went back to 30-70, #2, he was hoping that does not include executive action. All of a sudden a sponsor had to be there or written permission that did not include executive action. We didn't want to tie up executive action waiting for a sponsor to be there.

**Mr. Petesch** stated that it was never the intent and if you want that clarified we can say may not hear legislation. That would clarify that statement.

**SEN. GRIMES** said there were times that the sponsor can't be there.

**CHAIRMAN THOMAS** said you could just write on the bill, please let someone else introduce this bill.

**Mr. Petesch** said you don't need written consent from a cosponsor, (Sub 6), to blast the bill out of a committee and this specifically stated that when you do that, the bill did not include amendments that were adopted in a committee. It was a constant source of debate. It clearly provided that when you take something from a committee, it comes out the way it went in. This said that without me having to write an opinion each time. It clarified that you don't have to have second motions in a committee and the vote had to be recorded and reported. You don't have to do roll calls unless requested by some member them. You still would say it passed "unanimously" because that was recorded and reported. You had the statute that said you don't have to do roll call votes unless an individual member requested it.

Under #9 it said you can take a bill from the table by an affirmative vote at any time. Tabling in a committee did not kill a bill. Tabling meant you were setting it aside. They died



after transmittal or some other deadline because they were on the table but "tabling" it does not finally dispose of it.

**CHAIRMAN THOMAS** asked if you "indefinitely postponed" and then reconsider that action, it doesn't take but a majority vote to reconsider.

**Mr. Petesch** said that was correct and also it was spelled out in the rules. It may not be altered and once you tabled it, you had to reconsider your action or indefinitely postpone. As long as the bill, the matter, or the motion, whatever it happened to be, was in the possession of the committee, it remained there. It was in the possession of a committee until a report on the bill was made to the Committee of the Whole. You don't have to vote on the positive side to make a motion to reconsider a failing vote. A sponsor may make a motion to reconsider also.

**Secretary Skelton** asked that a vote for each member must be reported and recorded. Does that mean voice votes are not allowed?

**Mr. Petesch** said it means a vote for each member was recorded and reported. For example, a motion passed unanimously and you have the list of people in attendance. That was recorded and reported. Or, you could say passed with senators so and so voting in opposition. You would know the others voted in favor.

**SEN. ELLIOTT** was somewhat confused about the effective difference of "indefinitely postponing" and "tabling."

**Mr. Petesch** explained that "indefinitely postponement" means that we were going to put this off for any period of time. "Tabling" was something that can be reconsidered at any time. "Tabling" means just that. We weren't going to deal with this any more right now. We were going to put it aside. "Indefinite postponement" was the proper way to kill something. "Tabling" was used historically in the Montana Legislature as a way of killing bills.

**SEN. ELLIOTT** said you could reconsider your action on "indefinitely postpone."

**Mr. Petesch** said any motion can be reconsidered, including a "tabled" or an "indefinitely postponed," one. You can "table" something in the Committee of the Whole. That just means it stays there and didn't proceed. If you move that the bill to be "indefinitely postponed" or "postponed until the 90th day" that should be final disposition of the bill.

**CHAIRMAN THOMAS** stated that the motion to "indefinitely postpone" can be reconsidered and there was no length of time in a committee. On second reading the motion to reconsider took a majority vote to pass and then the bill was back. If you read Mason's, "indefinite postpone" was the way you were supposed to do it.

**Secretary Skelton** asked you can't "indefinitely postpone" in a committee because you can't kill a bill in committee, was that correct?

**CHAIRMAN THOMAS** said yes, but if the floor wants to yank the bill, it was just done like that. Committees can "indefinitely postpone" bills.

**Secretary Skelton** said they could only reconsider the "indefinite postponement" the next day, right.

**CHAIRMAN THOMAS** stated, yes, when we suspended the rules. That was when we voted and then in 24 hours it was dead.

**SEN. STAPLETON** said he thought they could debate the "indefinite postponed" and "tabled" was a non-debatable motion.

**Mr. Petesch** said he believed that was accurate. "Tabling" was a non-debatable motion and "indefinitely postponing" was debatable. The reason was "indefinite postponing" was intended to be final disposition where as "tabling" was not.

**Mr. Petesch** said on page 12, the chair decides all points of order. This laid out the privileges of committee members. Newer chairmen had been recently asking questions of what was appropriate and what the chairman can do and what he can't do. He can't stifle a member's participation in the committee. You can't prevent a member from making a motion and you can't prevent a member from asserting point of order. You can overrule them but you can't prevent them from making them. Members can only question witnesses by going through the chair and that was to maintain order and control. A member can offer an amendment on any bill. A member can vote either by being present or by proxy using a proxy form. He thought that was the standard Senate procedure now. If a meeting, for some reason, was held through a conference call or some other electronic communication, it was still subject to chapter 3 of the Senate Rules, which was this chapter on openness and the ability of members to participate. It clarifies that you can merge bills, table one, or whatever you choose to do in a committee and incorporate it into another one, if it was permissible, whenever it helps. That was designed to save floor time and an example would be the 20 bills of DUI'S

that **SEN. GRIMES** had. If you have one of them which was a general revision bill, you can move all the other bills into it to debate the DUI'S issue once rather than many times. This provides the committee procedures can be more informal than the Committee of the Whole procedure. When somebody questions whether, for an example, this was a debatable motion or not then the practices of the Senate are applicable unless specifically stated under these rules.

**SEN. KENNAN** said moving up to f, he suspected using a standard form was loosely interpreted.

**Mr. Petesch** said a standard form was what that committee decided to authorize at the organizational meeting. The reason it was there was, proxies are supposed to be reflected in the minutes. The intent of this was to help the secretaries.

**SEN. COCCHIARELLA** wanted to discuss about the chair making all the motions.

**CHAIRMAN THOMAS** said that was something good to talk about and in Mason's the chair didn't make that many motions. Wasn't that addressed in Mason's?

**Mr. Petesch** said he didn't know if there was anything specifically prohibiting it anywhere.

**CHAIRMAN THOMAS** asked if they had looked under Mason's? It wasn't parliamentary procedure training but he didn't know where it was. Maybe it was in Robert's but he knew it was not a practice that was followed. We are going to have a chair meeting for this.

**Mr. Petesch** spoke on 30-80 and said it was intended to implement the public participation requirements and it just said that you have testimony from proponents, opponents and informational witnesses and you had to do that on everything you are hearing before the committee and whether all people other than the sponsor of the bills who offered testimony had to sign the witness sheet and gave it to the committee secretary. That was what it was intended to be. Any person who wanted to offer testimony had to be given a reasonable opportunity either orally or in writing subject to time constraint. That was in there to say they had to hear five bills today, and he was going to give the proponents this amount of time and the opponents the same amount of time. With the number of bill requested we have, that might be necessary all the time. You can't require written testimony from someone but you can encourage them to submit written testimony. You get a better record if they do. The

really good lobbyists know. They always submit written testimony. It was a shame when they read it to you but that it was good practice so you can't misconstrue what they said. This clarified the chair can clear the room for disorderly conduct and if you are present there, you can't speak unless the chair recognizes you. If you are going to limit time for testimony, you had to announce it. It can even be done halfway through hearing testimony. Chairmen had to be able to maintain the progress of the meeting. You can't have more people in the room than the fire code allowed and the chairman was responsible for maintaining that. Specifically recognizing that cameras, television and radios were allowed but you can say where they are allowed. You can control where they set up their equipment.

**CHAIRMAN THOMAS** asked about 4, the fire marshals' area, a question had been raised about a balance within the meeting. Let's say he had a DUI'S bill and all the proponents are in here and the opponents can't get in, was there any leave for some kind of balance in here.

**Mr. Petesch** didn't know how you determine that up front. You can say we have people that want to come in here and testify and when you are through testifying, would you mind stepping outside to let them in and then remain available if we have questions at the end. That was kind of the chair's responsibility. You are not excluding someone from an open meeting if you are breaking the law by letting them in. That was what this was trying to say.

**CHAIRMAN THOMAS** asked if there was anything else on 30-80.

**SEN. KEENAN** had a request from a senator to discuss #5. The committee chair had the discretion to avoid having interruptions in the committee by the setting up of cameras, or they came in and took their pictures, and then they were breaking their cameras down and the committee chair can say, "Leave that camera there. It was distracting. We are having a hearing."

**Mr. Petesch** said that was decorum. He thought that was perfectly legitimate.

**CHAIRMAN THOMAS** said let's point the decorum out right now. It was stated in 30-60 that the chair was to maintain safety, order, and decorum.

**Mr. Petesch** said the reason for the number of the rules was so that the numbering will correspond to the House in which their orders appear that deal with similar subject matter. It was easier for people who staff House and Senate committees.

**Mr. Petesch** stated 30-90 was an existing Senate rule on committee reports and the change was in 2, which was reconsideration and it clarified which had always been a practice that the motion to reconsider had to be made within one day of the adoption of the committee report. The motion to reconsider an Adverse committee reports are disfavored now. They are not as common as they used to be as they take up floor time when the committees do and Adverse report. But if there was one, the sponsor gets to speak before you moved adoption of the Adverse committee report was what that allowed. So in essence, when the chairman of the committee moved the bill "do not pass" the sponsor got a shot.

**Secretary Skelton** stated that it wasn't really a debatable motion.

**Mr. Petesch** stated that it just allowed the chair to move the adverse and the sponsor of the bill, and only the sponsor to make a statement. He believed it was **SEN. HALLIGAN'S** recommendation.

**SEN. GRIMES** said the example would be if there were an issue that the committee knew or the leadership knew, needed to be debated on the floor, for whatever reason. It was a partisan reason, maybe, or it was a legitimate issue that could not be decided in a committee, then the chairman stood up and presented the adverse committee report.

**CHAIRMAN THOMAS** wanted to talk about it. Let's walk through it. You have both reports on the floor in this scenario.

**SEN. ELLIOTT** said you could offer a substitute motion to take it out and then you can have debate on that motion. While you are debating on that motion, can you debate the substance of the bill or just the motion?

**Mr. Petesch** stated it was just the motion. The bill was not before you. It was the motion.

**Secretary Skelton** said they do all the "do pass" reports and if there are "adverse" we saved them for the last. You go back to that committee and the chair will ask that the "adverse" committee report be adopted and then this rule allowed the sponsor to stand up and speak on it. Then it has to be voted on.

**Mr. Petesch** said he would give an example he remembered they talked about when we talked about this "adverse" committee report bill. The idea here was that you know that for every day until transmittal **Sen. Tester** was going to make a motion to blast the same bill from a committee every day. This allowed the committee to put it out on "adverse" and at least allows the sponsor of the

bill his chance to make a statement. That was what we discussed with this proposal. It allowed you to kill the bill without having the motion to take it from a committee every day and continue down that path.

**SEN. STAPLETON** wanted to go back two paragraphs up on 30-80, cell phones in #5. What about in committee meetings having cells, or was having any telecommunications allowed? All the chair can say was where you can use it.

**Mr. Petesch** said they did not take cell phones into consideration.

**CHAIRMAN THOMAS** said it still went back to where they may still be used but subject to the chair's decision where they can be used.

**SEN. STAPLETON** stated it just says "any form" can be used and the "chair may designate the areas of the hearing room from which the equipment must be operated."

**Mr. Petesch** said what they were thinking of was telecommunication equipment - internet, broadband, streaming audio.

**SEN. STAPLETON** said a lot of them may want to sit there with their telephone and had a reporter talking on the phone. If you were talking on the phone, that's disruptive.

**CHAIRMAN THOMAS** said the chairman will kick you out. We could say at the bottom of five that cell phone use was prohibited.

**Mr. Petesch** asked if they wanted to specifically state that cell phones must be turned off in the committee.

**SEN. COCCHIARELLA** said she didn't think they should do that. There were several ways they can be notified and as long as they don't ring, it would be all right to have them shut off.

**CHAIRMAN THOMAS** stated that the subject was within the discretion of the chair.

**SEN. STAPLETON** stated that at the same time you don't want to tell them that any form was allowed. It was standard now days for people to have a cell phone.

**Mr. Petesch** said most places had a sign that say "cell phones must be turned off." Do you want to provide that cell phones may not be used during a committee meeting?

**CHAIRMAN THOMAS** thought cell phone activity was subject to the discretion of the chair.

**SEN. ELLIOT** said the chair already had the authority to maintain decorum and the decorum was basically what the chair decides the decorum was.

**CHAIRMAN THOMAS** said that **SEN. STAPLETON** thought that the wording included any form of telecommunication was allowed. That was his concern. Your point that the decorum was subject to the chair prevails in all instances.

**Mr. Petesch** stated that they had instances where the chairman had said, "I don't want that tv camera in here." That was why this rule was in here.

**CHAIRMAN THOMAS** asked if that the reason that "any form" was there? He didn't know. Do you want something in here for precedents?

**SEN. STAPLETON** said he thought it was a distraction for someone to be talking on a cell phone.

**CHAIRMAN THOMAS** thought it would be good to have a sentence in there about cell phones.

**Mr. Petesch** said cell phone use was at the discretion of the chairman.

**SEN. STAPLETON** stated there should be a standing rule and it was easier to say it was not allowed.

**Mr. Petesch** said what this would allow if you said cell phone use was at the discretion of the chair and then designate an area, you could make everybody with a vibrating cell phone sit next to the door.

**CHAIRMAN THOMAS** said in 30-90 we had the majority and minority reports. Then we had the adverse committee report.

**Mr. Petesch** said this was where we had the italicized words not underlined.

**Secretary Skelton** stated the way they are handled was two are submitted for the bill. You read the majority report and then you promptly read the minority report. The chairman stands up and moves the majority report and a substitute motion by the minority moves the minority report, and that allows the debate.

**SEN. TESTER** said that debate can be talking about the substance of the bill.

**Mr. Petesch** said they still moved adoption of the report only, and not the substance of the bill. What you really were limited to with the minority report is a difference of opinion regarding what the reports said, but he didn't think you were allowed to fully debate the bill because you don't have the bill before you at that time.

**SEN. TESTER** said you could talk about what was in the bill other than the motion.

**Mr. Petesch** answered you can't fully debate the merits of the bill at that point. What you are limited to was why the "minority report" was better than the "majority report."

**Secretary Skelton** said if that passes it would be on second reading and you will get to debate the bill.

**SEN. TESTER'S** point he was trying to make was that there was a difference between debating the motion to blast out of a committee and you can only talk about the motion, and this action.

**Mr. Petesch** said it was a matter of degree, you were still limited to the report but you were allowed to explain why you had a minority report, in essence. Really, committees were discouraged from making adverse committee reports because they take floor time, which was the most precious commodity in the session. It used to be fairly common when you didn't have that many bills but because you now had so many bills, you don't have adequate floor time to allow adverse committee reports.

**Mr. Petesch** spoke on 30-100, pairs. Pairs are prohibited in a committee. This was not about the Committee of the Whole. Authorization for "absentee" or "proxy" voting had to be reflected in committee meetings.

**CHAIRMAN THOMAS** asked for comments on 30-100. 30-110 were all grammatical changes. 30-120 was changing the time frame to the last ten days instead of the last seven days.

**Mr. Petesch** said this was the exception for the three-day notice rule that said you were encouraged to give three-days subject to this rules the prior rule said. We do extend that to ten days before transmittal rather than seven.



**SEN. TESTER** asked why on the committee hearings, why the extension to ten days?

**Mr. Petesch** said that came out of our Missoula meeting and his recollection was that before transmittal, depending on the volume of legislation, we may be getting bills to sponsors no more than ten days before transmittal with the number of requests we had. So, that would allow the bills to still be posted and heard with less than three days notice, if you didn't get it for introduction until that time frame. That was one of the things that was discussed. Three days were different from the current rule and there was still the requirement to give as much notice as you can.

**CHAIRMAN THOMAS** went on to consider 30-140 and 30-150.

**Mr. Petesch** said 30-150 was for when the committee was the requester of a bill, the presiding officer didn't get to send it to some other committee. It had happened.

**CHAIRMAN THOMAS** went on to legislation, Chapter 4.

**Mr. Petesch** said the first substantive one is 40-50. This clarified what had always been confusing in the Senate. In the House any bill that doesn't get 50 votes on the floor can be finally disposed of there. It had always been a question whether in the Senate you had to put on the floor and transmit to the House every Senate bill that proposes a constitutional amendment. The answer was no. You can "table" or "indefinitely postpone" it in a committee. That's a majority vote. What this said was a vote in the Senate on a bill proposing an amendment where there was a mathematical possibility of getting 2/3 of the total legislature, had to go to the House. That was because of the requirement that it gets 100 votes. So it gets one vote on the second or third reading in the Senate, it had to go to the House. If it never hit the floor that's permissible and this rule clarified that. It had always been the case but they thought it best to specify it.

**Mr. Petesch** said this said that the majority leader arranged legislation on the agenda and the order in which they were considered, unless the Senate otherwise ordered.

**SEN. TESTER** asked if it was currently done by the President.

**Mr. Petesch** said it was not specified how it was done in here and it just clarified this action.

**CHAIRMAN THOMAS** stated it said by numerical order and they never do it in numerical order. It was always some other way they made it.

**SEN. TESTER** said he was just curious. He guessed his question was why does it have to be in the rules at all. The President can have anyone he wanted do it or he can do it himself. Really, what it does was get rid of the numerical order.

**SEN. TESTER** question was on 50-30?

**Mr. Petesch** said it was a typo. It should say "may not."

**Mr. Petesch** said 50-60 just clarified that a motion to rise was a non-debatable motion. It said on a motion (1) "for a call of the Senate" (2) "for the previous question to" (3) "table" or "take from the table," you can't amend those motions.

**SEN. ELLIOTT** stated that you could offer a substitute motion.

**Mr. Petesch** said he didn't know how you would amend them to be perfectly honest, it just clarified it. You can't amend these specific motions.

**CHAIRMAN THOMAS** asked for questions on 50-80.

**Mr. Petesch** said it just clarified if someone called for a previous question, you get to close on your motion.

**CHAIRMAN THOMAS** brought up 50-90 on reconsideration. S50-110 was about conference committee reports.

**Mr. Petesch** stated it was an attempt to clarify how conference committee reports are handled. If the conference committee report was adopted on something that required a super majority vote, this said that following adoption of the conference committee report, then the whole bill, as amended, was placed on third reading. At that point, it was to determine whether the extraordinary vote was obtained.

**CHAIRMAN THOMAS** said it was only on third reading.

**Secretary Skelton** said you only needed to take that vote, correct, if a super majority vote is required? Otherwise the majority vote stood.

**Mr. Petesch** said if a coal tax appropriation was coming out of the conference committee, the third reading on the conference committee was not the vote that determines whether it gets 3/4.

It was then a subsequent vote, but you only do that on bills that required the super majority.

**CHAIRMAN THOMAS** asked if there was anything else on 2 that you want to get into.

**SEN. ELLIOTT** said that you have two third reading votes on the same bill but not really.

**Mr. Petesch** said that one was on the conference committee report and once that was adopted on third reading then you vote on the bill for purposes of determining whether the extraordinary vote was obtained.

**SEN. ELLIOTT** asked if we have them on third reading on succeeding days?

**Mr. Petesch** said "no" unless it was the last day. Within that deadline the last day or whatever it was going to be, the transmittal, one reading a day didn't apply anyway.

**CHAIRMAN THOMAS** stated that you got a report read and adopted, then the conference committee report was on second reading and that was when you are debating the conference committee report and that was supposedly what the subject was at that time. Then, it goes to third reading, was approved there, and a bill that needed a 2/3 majority, must be voted on 3rd reading again in its entirety (not just the conference committee report) and that vote must get the 2/3 majority. That was when it does.

**Secretary Skelton** said it wouldn't go to the final vote unless it also has passed in the House.

**Mr. Petesch** said there was no point because you don't have an agreed upon a conference committee.

**SEN. ELLIOTT** said it would still be 2/3 of total legislators. So it needed to be done.

**Mr. Petesch** said this just clarified what was the final vote on that bill in the Senate.

**CHAIRMAN THOMAS** said it also was the 2/3 vote reading and that was really important that we follow that.

**Mr. Petesch** said sub 3 just clarified if you don't adopt a conference committee report, the conference committee can continue to meet unless the president dissolved the conference committee. Even though that first report wasn't adopted they can

go back and work and submit another report or two, three or four, unless the president dissolved the committee.

**CHAIRMAN THOMAS** stated that was the practice they did now.

**Mr. Petesch** said it just clarifies how they are operated. They meet with the House group and make recommendations for the Senate. That was because some people don't realize that conference committees are made up of two separate committees. We talked a little bit about that this morning. A conference committee meeting was really a meeting of two separate committees. It was kind of like the Joint Rules Committee.

**SEN. STAPLETON** asked about 50-120 and section 3, he would like to see us keep the "shall" in there not put it into "must." My point was that when someone like **SEN. COCCHIARELLA** says she had a bill and someone wanted to put an amendment on it, she should have some rights. You sort of torpedo her bill sometimes, if you bring a bunch of amendments before she gets to present her bill. So, the chair should have the authority to say **SEN. COCCHIARELLA** why don't you present your bill first and then we will deal with amendments. Sometimes it doesn't matter but he could think of several times when the amendment's discussions sort of gave the person presenting the amendment an inherited advantage because the sponsor didn't get to make their case for the bill yet. So, my thought was when you said amendments "must" be considered and then the bill in its entirety, he just thought it should be "shall."

**Mr. Petesch** said there was no change. This was just passive voice as opposed to active voice.

**Secretary Skelton** asked what happened when you read the history and the title of the bill and then the chair said "are there any amendments?" They were always considered first, unless you get up and say "Let me present the bill first and then you can have the amendments." But, if that doesn't happen, the amendments were always brought up first.

**SEN. STAPLETON** had addressed a different issue. It was not so much the wording here but a different idea that our rules might be changed slightly so that the sponsor had the right to defer to amendments or to give his bill first.

**SEN. WALTER MCNUTT, SENATE DISTRICT 50**, said it had happened before when somebody had an amendment and they will tell the chair that they don't want to propose the amendment until after they opened their bill.

**CHAIRMAN THOMAS** said or until the sponsor wanted to open on a bill before amendments.

**SEN. COCCHIARELLA** said she thought **SEN. STAPLETON** was making a good point. The sponsor of the bill should have at least some priority over the amendments. That had always bothered her a lot.

**SEN. STAPLETON** said he had **SEN. BUTCHER** in mind. He had amendments to a bill and we voted many times on this and we never got through the bill. It just seemed to him that it was a proper process to allow the sponsor and maybe by default it would go to amendments. On occasion if the sponsor wanted to retain that opening, that would be the default in our rules.

**Secretary Skelton** asked **Mr. Petesch** why we did the amendments first.

**Mr. Petesch** thought the idea, and he didn't know what the idea behind this, that you could open on the bill and then amend it. What it said, after all the amendments had been proposed and either adopted or rejected, then you debate the merits of the bill as it was at that point in time. He thought that was all this rule was trying to say.

**CHAIRMAN THOMAS** said that our process was to consider amendments and if the amendments do pass, now you have the bill for final passing.

**Mr. Petesch** said you may be discussing a different version of the bill at that point if the amendments are successful and the idea here was that we still need to talk about the bill at the end of the process. After the amendments you have to talk about the bill in the form it was in. That was really what all this rule was trying to say.

**SEN. GRIMES** said he has always allowed the sponsor to open the bill if they chose to do so even if there are amendments.

**Mr. Petesch** said he didn't think this prohibited it.

**CHAIRMAN THOMAS** said he didn't either. You could just hold your amendments back until later if you wanted to. He thought this process was out of Mason's. Our order was out of Mason's and this was where we get it.

**SEN. ELLIOTT** said the bill was moved in executive action and then amendments are placed on it and may be placed on the bill at any

point, but when the disposition of the bill was final, it was on the final bill.

**Mr. Petesch** thought this was all the rule was trying to say was exactly that same thing.

**SEN. ELLIOTT** did not think that he had seen a member deny a sponsor an opening on a bill if requested on floor action.

**Secretary Skelton** agreed.

**SEN. COCCHIARELLA** said she didn't think it was said because it's not understood that you have a right to say that. It would be nice to have something in the rules to indicate if requested of the chair, the sponsor had the right to open on the bill prior to the amendments.

**Mr. Petesch** said you could change this to say "unless the sponsor requests an opening statement proposed amendments must be considered first."

**CHAIRMAN THOMAS** thought that would be good because then it was right there out front that says you can do it.

**SEN. COCCHIARELLA** said even the amendments, if she were to carry the code commissioner bill and there were some amendments that affect other parts of that whole bill, and she just wanted to amend that piece she would rather have the sponsor open on the bill.

**Secretary Skelton** said often you can't really discuss them because you don't know what you are talking about.

**CHAIRMAN THOMAS** said let's include something in there and let **Mr. Petesch** draft it and we will approve it. In 50-140 the change was significant. We were allowing changes in the Committee of the Whole agenda before we begin. Something we had always done but it was not allowed in our rule.

**SEN. GRIMES** wanted to talk about 50-160 on sub paragraph 2. A motion on second reading must be disposed of by a positive vote. It can be moved again on the floor if it was not a positive vote. He wondered if that clarification needed to be made.

**CHAIRMAN THOMAS** said he didn't think so. If the motion fails then the bill was still there and that was why you make the other motion.

**Secretary Skelton** stated that when a "do pass" motion failed, then you needed to dispose of it.

**Mr. Petesch** said in essence if you look at S50-120, sub 5, it was the same thing. When the report fails, it just stays where it is. That was why you need to dispose of it with a positive vote.

**Secretary Skelton** said unless you don't want to.

**SEN. GRIMES** said he thought that what has happened to us. We voted on something and we are all sitting there looking at each other and wonder if we know what we just did.

**CHAIRMAN THOMAS** said this was saying it had to be disposed of on a positive vote or it never went anywhere.

**Secretary Skelton** said the "do not pass" had to have a positive vote.

**CHAIRMAN THOMAS** said or it needed to be "indefinitely postponed" or whatever was done. There was nothing changed in 50-170 but in 50-180 we had the votes.

**Mr. Petesch** said this was the House procedure for changing a vote. The Senate rule said you may not change your vote after it was announced from the chair. You did it last session when you have so many House members coming over. This essentially says you can do it within one day unless it changes the outcome. It was non-debatable and anybody can object to your changing your vote and then you can. If somebody objects, you can make a request to suspend the rules to allow them to change the vote after that. A malfunction of your voting system can be corrected at any time without a vote within ten minutes of the malfunction. Say your button didn't work, or somebody switched the red and green on you, that would be something you could change within ten minutes.

**SEN. ELLIOTT** asked if you want to change your vote after ten minutes of malfunction, he imagined you could ask that the rules be suspended to do that.

**Mr. Petesch** said you don't need a motion to change your vote if it was a malfunction within ten minutes. You can make a motion within one day to change your vote unless it changes the outcome of the vote.

**CHAIRMAN THOMAS** thought they needed to insist on here was if someone was going to change their vote, at least have a copy of the recorded vote, share it with us before they do it. Otherwise

just cut it out. Nobody needed to change their vote on any of these bills. We needed to work that way.

**Mr. Petesch** talked about pairs in 50-190. All this was about was the continuous debate about whether pairs constitute present and voting within the constitutional requirement that a bill had to be approved by the majority of members present and voting. The House allowed absentee voting. That was totally wrong. However, pairs may be legitimate and this clarified it because Mason said "a member who was not present when the question was put, but pairing which was a type of absentee voting by which a member agreed with a member who had voted opposite to the first member not to vote, has long been used in Congress and some states and had been recognized by the courts." He didn't know about our courts but there was at least a basis for legitimacy of Senate pairing and this clarifies that you are considered present in the Senate rules. You don't have to go to Mason to debate that issue.

**Secretary Skelton** remembered when the Mike Mansfield resolution was voted on. Members were going to be gone and they wanted to be shown as voting for it but there wasn't a "no" vote to pair with and so there was no way to record an absentee vote. That was why the House had absentee votes.

**Mr. Petesch** said the House allows them on anything. In my opinion based on Mason's that was bad practice.

**CHAIRMAN THOMAS** said pairs was a little bit subjective but we don't want absentee voting. Now 50-220 was on Governor's amendments.

**Mr. Petesch** said it just puts in the Senate Rules a procedure that we talked about in Joint Rules this morning. When they are done, debated, adopted, or rejected then obviously on second reading any day, there was no time frame on them and, in essence the conference committee concept carried over to Governor's amendments. If you both adopt them you place the final form on third reading. It was not the third reading on the Governor's amendments. It was again for a bill that required a super majority. This was the same procedure for Governor's amendments for super majority votes that would apply to conference committees.

**CHAIRMAN THOMAS** asked if they were going to second and third reading on the Governor's amendments and then the third reading on the bill as amended by the Governor.

**Mr. Petesch** stated that was correct.



**Secretary Skelton** asked if that was only if it was super majority? The majority one was fine?

**Mr. Petesch** said you only do third twice on a super majority bill.

**SEN. ELLIOTT** said that raised a question in my mind. The only thing different was the requirement of a super majority to pass the bill. When we got a conference committee report on a bill, we adopted the conference committee report, did that contain the entire body of the bill?

**Mr. Petesch** stated that you adopted it on second reading and the bill as amended on third on the conference committee, but then in order to determine whether the bill passes the Senate by an extraordinary vote you vote again.

**Sen. Elliott** said he wasn't worried about that. You made it clear with the second reading. The second reading was on the report and third reading was on the bill.

**CHAIRMAN THOMAS** said if it was a super majority then you go to a second and third reading.

**Mr. Petesch** said it clarified that this was the final vote in the Senate. We had the Governor's veto and this practice that clarified that you can move to override it at any time, any day.

**Mr. Petesch** said 70-10 was just the Governor's nomination list. There was no substance. The last page was a list of questions requiring more than a majority and all this does was add to that list the motion to approve a bill to appropriate the principal of the tobacco settlement trust fund needs a 2/3 vote. It was a new requirement.

**CHAIRMAN THOMAS** said that was all the changes. What we had gone through and seem to have concurred in was everything except S20-80 and that was to strike the employment lobbying rules. In S30-40 we were not amending sub section 2 allowing majority or minority leaders to vote in committees. Otherwise, we agreed to these amendments at this point.

**Mr. Petesch** said he would renumber the rules to reflect that it was not included.

**CHAIRMAN THOMAS** said that **SEN. COBB** has put forth the cloakroom question.

**Mr. Petesch** said that a spouse of a legislator may be in the cloakroom which was the side room off the Senate.

**SEN. GRIMES** said that was interesting. We have never allowed spouse in the Senate and it was always the part to get used to when you first come over from the House. This would not violate this same standard we have in the Senate but it would allow a little bit for the spouses out in the ante room or was it a cloakroom?

**Secretary Skelton** stated it was called the cloakroom because it used to be where the coats were hung. It had been a long time since it held coats.

**CHAIRMAN THOMAS** asked if there was a motion on this proposal. Seeing none, we will drop it. **Sen. Tester**, your proposal was in the same handout.

**SEN. TESTER** said he really didn't need to explain it, it was pretty much self-explanatory. Basically, they would like to be able to assign the minority members on the conference committee in the Senate.

**Motion:** **SEN. TESTER** moved **TO LET THE MINORITY LEADER CHOOSE THE MINORITY MEMBERS COMMITTEE ASSIGNMENTS ON THE COMMITTEE OF COMMITTEES.**

**CHAIRMAN THOMAS** said he couldn't speak for the President specifically but he gave them every absolute assurance that he would work with them on these committee makeups, take input and be very open in considering suggestions they might have. He didn't expect that they could live with this amendment.

**SEN. TESTER** brought it up now because it was his belief that the Committee on Committee did a very fair job of doing committee assignments this time around and there was no sort of agenda. There was no sort of getting even other than it has been expressed to me by several senators in the minority, and he frankly agreed with them, and he understood where they were coming from too. It would be nice to have them appointed by the minority. He wanted to bring it forth. He thought it had merit and he wanted them to know it had nothing to do with **SEN. KEENAN** or yourself or the Committee on Committees.

**CHAIRMAN THOMAS** said he appreciated that.

**SEN. COCCHIARELLA** said the majority was not serving the minority and the minority was not serving the majority. This would not have been an issue if everyone had a chance to serve in both

instances. There was not respect for the role of leadership or the role of the minority, so until everybody had this chance, these will be the issue.

**SEN. STAPLETON** said regardless of who sits where, on the subcommittees he sat on these two guys have been my chairman in the interim and we voted them in. As a chairman of the interim, he thought there was respect for them.

**SEN. COCCHIARELLA** said she wasn't being critical. **SEN. TESTER** was just saying it was on both sides.

**CHAIRMAN THOMAS** said seeing no further discussion, all those in favor of **Sen. Tester's** motion for the proposed amendments say aye and nay. The proposed amendment failed 5-7.

**CHAIRMAN THOMAS** asked for a motion to request drafting the Senate Rules for the upcoming session.

**Motion/Vote:** **SEN. ELLIOTT** moved **TO ACCEPT DRAFTING FOR THE SENATE RULES. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 4:00 P.M.

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SEN. FRED THOMAS, Chairman

\_\_\_\_\_  
Fredella D. Haab, Secretary

FT/FH

**EXHIBIT (rus00bad)**